

1 air?

2 A I don't believe so, no.

3 Q Did there come a point when George Gardner put
4 someone in charge of getting these stations on the air?

5 A I believe George Gardner always reserved the
6 responsibility to put these stations on the air to himself.
7 However, he delegated some decision-making or planning to
8 other persons -- planning responsibility to other persons.

9 Q Who were those other persons?

10 A Hal Etsell, and then I believe after that Lee
11 Sandifer.

12 Q And when did George Gardner delegate the
13 responsibilities to Hal Etsell?

14 A I, I don't know exactly when he delegated --

15 Q Approximately.

16 A Approximately? Some time in late-1990 or early-
17 1991.

18 Q How do you know that?

19 A Well, I see this business plan which is dated 1991
20 and I know that Hal Etsell and I had discussions early in 1991
21 and possibly in 1990 about planning for the LPTVs' use.

22 Q Did Hal Etsell give you specific projects to do with
23 respect to the development of the low-power station?

24 A Hal Etsell asked me to discuss possible terms and
25 conditions of programming availability in my discussions with

1 | programmers in regard to whether or not the programming would
2 | be available for use on LPTVs.

3 | Q Mr. Gardner, did you do what Mr. Etsell asked you to
4 | do?

5 | A Yes, I did.

6 | Q Did you report back to him?

7 | A Yes, I did.

8 | Q What is it you told him?

9 | A Programmers were generally negative on their desire
10 | to be carried on LPTV.

11 | Q When did you tell him that, approximately?

12 | A From, from time to time as I had conversations.

13 | Q Can you narrow it to a season and a year?

14 | A It was ongoing from 1990 through the time of the
15 | turning in of the construction permit.

16 | Q Did he ask you to do anything else?

17 | A I don't know that he specifically asked me to do
18 | anything else. I know that I was doing things and I would
19 | report to him what I had found out.

20 | Q For instance?

21 | A Working with Cable AdNet which is a -- or was a
22 | seller --reseller of advertising time specifically for the
23 | cable industry. I talked to the people at Cable AdNet to see
24 | if they would be interested in selling advertising time on the
25 | LPTVs. I made him generally aware of my belief that equipment

1 was readily available and the types of equipment that he was
2 thinking of using were fairly common and, and easy to come by.

3 Q When Mr. Sandifer took over charge of the low-power
4 project, did Mr. Sandifer ask you to do anything with respect
5 to getting the Lebanon and Lancaster stations up and running?

6 A Yes.

7 Q What did Mr. Sandifer ask you to do?

8 A He would explain -- he, he, he mentioned things that
9 he was doing and in the conversation I -- he would ask me do I
10 know somebody at such-and-such a cable system for instance
11 that I might be able to talk to to find out what their feeling
12 is about carrying LPTVs on their cable system, cable systems
13 that were in the coverage area of the LPTVs and so he could be
14 aware of the names of the people that needed to be contacted
15 to, to discuss carriage of the LPTVs.

16 Q And did you do as Mr. Sandifer asked you to do?

17 A Yes.

18 Q And did you report back to Mr. Sandifer?

19 A Yes.

20 Q What did you tell Mr. Sandifer?

21 A That we were having difficulty in getting carriage
22 of the LPTVs on the local cable systems.

23 Q Was that a matter of the tail wagging the dog, so to
24 speak, the cable companies wouldn't carry the low-power
25 stations until you showed them what type of programming you

1 had and you wouldn't build the stations until you got
2 assurances that the cable companies would carry the stations?

3 A No. I believe it could be characterized as the
4 first part, that the cable systems wanted to see what kind of
5 programming could be delivered, you know, a proposal for what
6 type of programming to be delivered that would be
7 differentiated from what they were presently carrying and be
8 desirable for their customers.

9 Q And why was Raystay unable to demonstrate to the
10 cable companies that the low-power stations could deliver that
11 type of programming?

12 A Because the types of programming -- network
13 programming that would -- that were willing to give Raystay
14 the authority to carry their services just were not being
15 successful on LPTV or on cable systems. They were -- they
16 seemed to be very duplicative of services that were already
17 being carried by cable systems and we were -- Raystay was
18 having difficulty in convincing the cable system owner or
19 cable system managers that we could provide something that was
20 differentiated.

21 Q Well, what did Raystay have in mind as to the type
22 of programming that would convince cable operators to carry
23 the stations?

24 A Well, we looked at a number of different program
25 services. One of the types of, of program services was a home

1 shopping type network but home shopping certainly was
2 exploding during that time period and the services we could
3 provide seemed duplicative to ones they were already carrying.
4 Others were music video type of service that was not MTV and
5 MTV was in the process of being very aggressive in taking the
6 most desirable videos and getting exclusive contracts for them
7 and the types of video programming -- MTV or music video type
8 programming that Raystay could supply were not being
9 successful in other areas. We looked at nostalgic or older
10 type movies and nostalgic type television services and of
11 course they became -- they were duplicative of services that
12 were just coming on on other cable systems. And the -- there
13 was news services which were duplicative of Cable News
14 Network. It, it was very difficult to find programming that
15 met the -- that met the criteria of the cable operators.

16 Q So, you looked home shopping, music videos, old
17 movies and, and news formats?

18 A And nostalgic type -- a nostalgic type service which
19 was not movies but was very old material from the early days
20 of television, you know, the fifties and sixties.

21 Q And you looked at these types of formats early on,
22 say late-1990 you looked into these things?

23 A I don't know if it was -- not all of them in 1990,
24 certainly some of them in 1990, but some of them were 1991 and
25 even, even I think into 1992.

1 Q Into the matter of your visits to the transmitter
2 sites there's been considerable discussion about the number of
3 visits and I'd like to just get some clarification on this for
4 the record. Let's take the Lebanon site first.

5 A Yes.

6 Q How many times did you visit the Lebanon, the
7 Lebanon site?

8 A I visited the Lebanon site, and by visit I mean
9 actually stopped, got out of the car and walked around on it,
10 twice.

11 Q Approximately when did visit the site?

12 A First visit was -- we -- in preparing for these
13 proceedings we've taken a lot of time frames and taken them
14 out so, you know, by referring to them and saying well, I know
15 I didn't visit it when we were doing this type of thing or
16 that type of thing. So, I -- my best recollection is that it
17 was in 1990.

18 Q That was your first visit to Lebanon?

19 A I believe it was, yes.

20 Q Would that have been pretty soon after the
21 construction permit was granted? And I should say
22 construction permits because there were two of them for
23 Lebanon.

24 A Yes. I know that it was sometime -- I believe that
25 it was sometime after the construction permits were granted

1 but before there was snow on the ground, so it must have been
2 within the -- the construction permits were granted in --

3 Q July 1990.

4 A -- July, so it must have been within that six-month
5 period, July to December 1990.

6 Q When was your second visit to Lebanon? You said
7 there were two, correct?

8 A Yes.

9 Q The second one was more recent?

10 A Second visit would have been after Tom Riley's visit
11 which was in October of 1991, but again, before there was snow
12 on the ground. So, so, I would expect it would have been
13 October, November, December of 1991.

14 Q Have you visited the Lebanon site since late-1991?

15 A Yes.

16 Q So, there were more than two times that you have
17 visited the Lebanon site?

18 A The, the last visit was after the construction
19 permits had been --

20 Q Not the last one. I want to know the next one after
21 October 1991.

22 A Okay. The --

23 Q Go in order.

24 A Okay. The next one would have been sometime in
25 1993.

1 Q Now, was that time the last one?

2 A For Lebanon, yes.

3 Q Do you remember when it -- well, that's all right,
4 1993. What was your reason for visiting this -- the Lebanon
5 site in 1993?

6 A To refresh my recollection of the site because there
7 were -- there -- in regards to these proceedings it was
8 evident that there were going to be a lot of questions about
9 them.

10 Q Did counsel tell you to visit the site in 1993?

11 A I don't recall that counsel suggested it, no.

12 Q Did anyone suggest that you visit the site in 1993?

13 A I don't recall that anyone suggested I visit the
14 site, no.

15 Q When you say you, you can't recall, do you mean that
16 counsel might have suggested but you can't recall him doing
17 so?

18 A I recall that -- I believe the suggestion was mine
19 and that counsel agreed that it might be helpful in helping me
20 refresh my recollection of the sites.

21 Q Now, let's backtrack. Why did you visit the Lebanon
22 site in late-1991 after Tom Riley's visit?

23 A I was going to the Lancaster site and the Lebanon
24 site was easy to visit and I felt I wanted to take a look at
25 the site since I was going to be down there looking at the

1 | Lancaster site anyway.

2 | Q Now, the Lebanon site the Quality Hotel site. Is
3 | that correct?

4 | A Yes, um-hum.

5 | Q Now, you testified Friday, I believe, that when you
6 | visited the, the Quality Inn Hotel Lebanon site that you
7 | realized at some point that the tower and antennas should be
8 | mounted on the roof rather than on top of the elevator
9 | building. Is that correct?

10 | A Yes, um-hum.

11 | Q At which visit did you make that determination?

12 | A I don't recall if it was the first or second visit.

13 | Q But it was one of those two, you're sure of that?

14 | A Yes.

15 | Q When you made that determination that the tower and
16 | antennas would be better located on the roof rather than on
17 | top of the elevator building, did you convey that
18 | determination to anyone at Raystay?

19 | A No.

20 | Q Why not?

21 | A It didn't seem important at the time.

22 | Q Mr. Gardner, if the station at the Quality Inn in
23 | Lebanon had been constructed, do you know whether they would
24 | have been constructed on the roof or on top of the elevator
25 | building?

1 MR. SCHAUBLE: Objection, Your Honor. What's the
2 relevance of this? As Your Honor pointed out Friday, what,
3 what the witness -- the witness has testified as to what he's
4 done and that's what's relevant to this issue.

5 MR. SCHONMAN: Well, this directly relates to what
6 Raystay has done, Your Honor. There's a question in the
7 extension applications, all eight of them, question number 8,
8 "Were the representations contained in the application for
9 construction permit still true and correct?" And in each of
10 the eight extension applications Raystay said "Yes." Now, if
11 the representations were not still true and correct, that is,
12 if Raystay was contemplating putting the tower and antennas in
13 a different location, that would be a change in the
14 construction permit applications. And I'm trying to determine
15 whether Raystay responded properly to question number 8 in
16 each of the extension applications.

17 JUDGE CHACHKIN: I'll overrule the objection. Do
18 you have something else to say, Mr. -- counsel?

19 MR. SCHAUBLE: Yes, yes, Your Honor. I, I don't
20 think I, I necessarily concede -- agree with counsel's,
21 counsel's interpretation of that particular question but Your
22 Honor has so ruled so --

23 JUDGE CHACHKIN: All right. Go ahead.

24 MR. GARDNER: Could you repeat the question?

25 MR. SCHONMAN: Possibly. Hold on. I think it would

1 | be good if we played it back. I can't remember the exact
2 | terms of the --

3 | (Whereupon, off the record to play back question.)

4 | (Whereupon, on the record.)

5 | MR. SCHAUBLE: Your Honor, just for the record, I, I
6 | continue to object on the question on the basis that there is
7 | no foundation that any amendment of the application would be
8 | required in that instance where there's no change in the site
9 | but just -- that that sort of change would require a response
10 | to the, to the question on the FCC Form 307.

11 | MR. SCHONMAN: Your Honor, the extension application
12 | talks about representation and there is a pictorial
13 | representation in the construction permit application and that
14 | pictorial representation clearly indicates that Raystay was
15 | contemplating putting the tower and antennas on top of the
16 | elevator building. That's the sketch. And if Raystay was
17 | contemplating something other than putting the tower and
18 | antennas on top of the elevator building, that would have been
19 | a change which the Bureau believes should have been reported
20 | in the extension application in response to question 8.

21 | JUDGE CHACHKIN: Well, then the question is not
22 | whether they contemplated building it, the question is had a
23 | decision been made at the time that the construction extension
24 | was filed to in fact build it on the tower instead of the
25 | elevator. I mean, he might have had all kind of

1 | contemplations, but the question is what -- the decision had
2 | actually been made and if you want to modify your question
3 | I'll allow that question, but --

4 | BY MR. SCHONMAN:

5 | Q I'll modify it. Had a decision been made,
6 | Mr. Gardner, to place the tower and antennas on the roof of
7 | the Quality Inn rather than on top of the elevator building?

8 | A No.

9 | Q Mr. Gardner, when the construction permit
10 | application was filed there were representations in that
11 | application that you were an officer of Raystay. Is that
12 | correct?

13 | A When the first application for the --

14 | Q Let me repeat the question and I'll clarify it.
15 | When the construction permit applications were filed in 1989,
16 | those four applications represented that you Mr. Gardner were
17 | an officer of Raystay?

18 | A Yes.

19 | Q At the time that the extension applications were
20 | filed --

21 | JUDGE CHACHKIN: Which one, the first or the second?

22 | MR. SCHONMAN: The first round of extension
23 | applications.

24 | JUDGE CHACHKIN: That's December 1991?

25 | MR. SCHONMAN: Yes.

1 BY MR. SCHONMAN:

2 Q Were you at that time an officer of Raystay?

3 A No.

4 Q To your knowledge, had the construction permit
5 applications been modified or amended prior to their grant to
6 indicate that you were no longer an officer of Raystay?

7 A Not to my knowledge, no.

8 Q Let's move on to your visits to the Lancaster
9 concrete factory.

10 A Ready-Mix Concrete.

11 Q How many times did you visit that location?

12 JUDGE CHACHKIN: I'll use the definition that you
13 use, namely, you went on the land.

14 MR. GARDNER: Yes, sir. Three times.

15 BY MR. SCHONMAN:

16 Q Approximately when were those three times?

17 A The first one was very close if not the same day
18 that I visited Lebanon which the first time I visited was
19 1990, between the grant of the construction permits and
20 sometime in the first six months or so after the grant.

21 Q Before the snows came?

22 A Before the snows came. Second one would have been
23 after Tom Riley's visit to the sites and his subsequent phone
24 conversation with me which would have been October, November,
25 December of 1991. And the third visit where I actually

1 physically got out of the car was in 1993.

2 Q And did you visit the Lancaster site in 1993 for the
3 same reason that you visited the Lebanon site in 1993?

4 A Yes.

5 Q Now, there came a time when you made the
6 determination that the Lancaster tower and antenna should be
7 mounted on a free-standing tower rather than on top of the
8 structure at the Ready-Mix Concrete factory? Is that correct?

9 A That was an alternative that I was looking at
10 strongly, yes.

11 Q It was not a determination that you made?

12 A It was not a final determination that was made by
13 Raystay.

14 Q Thank you. Mr. Gardner, let's turn to Bureau
15 Exhibit No. 528.

16 A Yes.

17 Q Bureau Exhibit 528 consists of one extension
18 application and this one happens to be for Channel 31 at
19 Lancaster.

20 A Yes.

21 MR. SCHAUBLE: Excuse me, Your Honor. Is Bureau
22 Exhibit 528 in evidence? My records indicate that it was not
23 offered, but there are many Bureau exhibits that were not
24 offered in evidence because they were duplicative of TBF
25 exhibits.

1 MR. SCHONMAN: All right, for -- I --

2 JUDGE CHACHKIN: Why don't you use the --

3 MR. SCHONMAN: I'll use --

4 JUDGE CHACHKIN: -- TBF exhibits?

5 MR. EMMONS: Could we go off the record a moment,
6 Your Honor?

7 JUDGE CHACHKIN: Yes.

8 (Whereupon, off the record.)

9 (Whereupon, on the record.)

10 BY MR. SCHONMAN:

11 Q Mr. Gardner, do you have before you Trinity Exhibit
12 No. 245?

13 A Yes.

14 Q And that consists of four extension applications?

15 A Yes.

16 Q Two for Lancaster, two for Lebanon. And Exhibit 1
17 to each of those applications is identical?

18 A Yes.

19 Q And the responses on each of the FCC forms are the
20 same for each of the four applications?

21 MR. SCHAUBLE: Objection, Your Honor. That's not,
22 not accurate.

23 JUDGE CHACHKIN: Sustained.

24 BY MR. SCHONMAN:

25 Q Mr. Gardner, let's move to the Exhibit 1 to the

1 first extension application. Since they're all the same it
2 really doesn't matter.

3 A Yes.

4 Q All right. The second paragraph, the one that
5 begins, "Initially, it must be noted that Raystay has built
6 and is currently operating TV-40." Do you see that?

7 A Yes.

8 Q To your knowledge, why did Raystay feel that that
9 information must be noted in this extension application?

10 MR. SCHAUBLE: Objection, Your Honor. Relevance.

11 JUDGE CHACHKIN: I'll overrule the objection. If
12 the witness knows.

13 MR. GARDNER: After -- phone conversation between
14 John Schauble and myself, he sent me Exhibit 1 for my review
15 for accuracy and John Schauble placed this statement in
16 Exhibit 1 and I thought it was accurate.

17 BY MR. SCHONMAN:

18 Q Well, that's all well and good. I didn't ask you
19 about whether it was accurate or not. I asked you if you knew
20 why Raystay thought that this information should be noted in
21 this extension application.

22 A John Schauble created the exhibit and he felt that
23 it should be in there so since it was accurate I accepted it
24 as being required -- as being in there.

25 Q Correct me if I'm wrong. Raystay was filing this as

1 well as the other three extension applications in order to
2 convince the Commission that the construction permit should be
3 extended. Is that correct?

4 A Yes.

5 Q And in order to convince the Commission that the
6 construction permit, permit should be granted --

7 A Extended.

8 Q Extended. Thank you. It was important to convince
9 the Commission that Raystay intended to construct and later
10 operate the station. Is that correct?

11 A I believe that's correct.

12 Q Is it also true that this paragraph was put in here
13 the way of telling the Commission that Raystay had built and
14 was operating one station and therefore the inference could be
15 drawn that Raystay intended to build and operate the other
16 low-power station? Is that correct?

17 MR. SCHAUBLE: Objection. No foundation as to --

18 JUDGE CHACHKIN: Sustained.

19 BY MR. SCHONMAN:

20 Q Mr. Gardner, what is it that Raystay wanted the
21 Commission to understand when it read this paragraph?

22 MR. SCHAUBLE: Sustained.

23 JUDGE CHACHKIN: It was counsel's statement --
24 prepared the statement. He doesn't know anything about it.
25 He just said it was accurate so he allowed it in.

1 BY MR. SCHONMAN:

2 Q Let's move on to the third paragraph.

3 JUDGE CHACHKIN: Did you have any discussions with
4 Mr. Schauble concerning including or not including this second
5 paragraph?

6 MR. GARDNER: I don't recall any such discussions.

7 JUDGE CHACHKIN: All right. Go ahead.

8 BY MR. SCHONMAN:

9 Q Focusing now on the third paragraph, the first
10 line, it says "At the present time equipment -- has not been
11 ordered or delivered." At the time this extension application
12 was filed, did Raystay have any plans to order equipment?

13 MR. SCHAUBLE: Objection. Relevance. No foundation
14 that that's --

15 JUDGE CHACHKIN: Overruled.

16 MR. GARDNER: I was not aware of any specific plans
17 to purchase specific equipment.

18 JUDGE CHACHKIN: You know, the word plans is a --
19 it's a pretty ambiguous term. I mean, there could be
20 specific, concrete things you could have done, but plan --

21 BY MR. SCHONMAN:

22 Q At the time this extension application was filed,
23 had you been given any instruction to order equipment at any
24 point in the future?

25 A I had not.

1 Q Were you aware whether or not anyone else had been
2 given instructions to order equipment subsequent to the filing
3 of this extension application?

4 MR. SCHAUBLE: Objection to the form of the
5 question. Do you mean --

6 BY MR. SCHONMAN:

7 Q Okay. I'll try to do a better job this time. At
8 the time this extension application was filed, are you aware
9 whether anyone else had been given any instructions concerning
10 ordering -- the, the ordering of equipment?

11 A I was not aware that anyone had been given
12 instructions to order equipment prior to the filing of this
13 exhibit.

14 Q Let's take the next sentence, "Raystay, however, has
15 had discussions with equipment suppliers concerning the types
16 and prices of equipment that could be used at the site as
17 specified in the construction permit."

18 A Yes.

19 Q Do you see that? Have you had discussions -- at, at
20 the time this application was filed had you had discussions
21 with equipment suppliers concerning the types of prices of
22 equipment that could be used at the site specified in the
23 construction permit?

24 MR. SCHAUBLE: Objection, Your Honor. This has been
25 asked and answered. We've gone over this already before.

1 JUDGE CHACHKIN: I'll overrule the objection.

2 MR. GARDNER: Yes, I did.

3 BY MR. SCHONMAN:

4 Q Approximately when were those discussions?

5 A From 1990 through 1991 I had discussions with
6 equipment suppliers and after 1991 I had some small
7 discussions, 1992, but they were not for major pieces of
8 equipment.

9 JUDGE CHACHKIN: Had you obtained the specific
10 equipment proposal for equipment to be used in Lebanon or
11 Lancaster?

12 MR. GARDNER: I myself did not, no.

13 JUDGE CHACHKIN: Do you know of anyone at Raystay
14 who had obtained a specific equipment proposal for equipment
15 to be used at Lancaster or Lebanon?

16 MR. GARDNER: I knew, I knew of no one who had a
17 specific equipment proposal for equipment to be used at
18 Lancaster or Lebanon.

19 JUDGE CHACHKIN: So, all your discussions were just
20 general as to the type of equipment which could be used for
21 LPTV. Is that what you're saying?

22 MR. GARDNER: My, my discussions were general, yes.

23 BY MR. SCHONMAN:

24 Q Let's take the next sentence, Mr. Gardner. "It
25 meaning Raystay has entered into lease negotiations with

1 representatives of the owners of the antenna sites specified
2 in the applications although those negotiations have not been
3 consummated." Do you see that?

4 A Yes.

5 Q Now, the lease negotiations that Raystay is
6 referring to here, are those the negotiations that you say
7 took place during your 60-second conversation with the
8 representative from the concrete factory as well as the 60-
9 second conversation that took place with the manager of the
10 hotel?

11 A Yes.

12 Q Is that sentence -- the basis for that sentence
13 about lease negotiations solely based on those 60-second
14 discussions you had?

15 A No.

16 Q What is the basis for that sentence, or the bases?

17 A We -- Raystay also had a -- information from Telsa,
18 Greg Daly, indicating that those sites were available for
19 possible LPTV transmission sites.

20 Q Now, who, who is Mr. Daly?

21 A He's man who gets -- who, who gets permission from
22 owners of sites to use them initially for applications for
23 transmitter sites.

24 Q And Mr. Daly works for what company?

25 A Telsa I believe it is.

1 Q Can you spell that?

2 A Believe it's T-E-L-S-A.

3 Q Now, when did Mr. Daly have conversations with the
4 people at the Quality Inn or the people at the concrete
5 factory?

6 A It would have been prior to the application for the
7 construction permits which was in -- was it 1989?

8 Q Yes.

9 A Yes.

10 Q Did Mr. Daly speak with both the Quality Inn and the
11 concrete factory?

12 A I'm not aware of the specifics of whether or spoke
13 to both the representatives of the concrete factory and the
14 hotel. However, his paperwork indicated that he had received
15 permission to use them in the applications.

16 Q Was that, was that he was retained to do --

17 A Yes.

18 Q Now, with respect to your use of the -- I'm sorry,
19 with respect to the use of the phrase lease negotiations,
20 other than Mr. Daly, the negotiations that Raystay is
21 referring to are the 60-second conversations you had with the
22 Quality Inn and the 60-second conversation you had with the
23 concrete factory?

24 A Yes.

25 Q Do you distinguish at all between the word

1 discussions and the word negotiations?

2 A No.

3 Q They're synonymous to you?

4 A Yes.

5 JUDGE CHACHKIN: A -- 60-second discussion with an
6 unknown person constitutes negotiations?

7 MR. GARDNER: Yes.

8 JUDGE CHACHKIN: That does constitute negotiations
9 in your mind?

10 MR. GARDNER: Yes.

11 JUDGE CHACHKIN: But you -- according to you, the
12 only thing that was discussed was the continued availability
13 of these sites. Isn't that correct?

14 MR. GARDNER: Yes.

15 JUDGE CHACHKIN: There weren't negotiations of a
16 price or time you could use these sites or anything of that
17 nature. Is that correct?

18 MR. GARDNER: No, there was no such discussion to my
19 recollection.

20 JUDGE CHACHKIN: So, what do you mean when you say
21 you entered into lease negotiations if all you've done was
22 determine the availability of the site without even
23 identifying yourself as the, as the individual -- identifying
24 the company that was going to use the site? I'd like to know
25 how that constitutes lease negotiations.

1 MR. GARDNER: My discussions with them I identified
2 them as being -- I, I recall generally that they indicated
3 they had the ability to negotiation or discuss the
4 availability of the site, that they were the correct person to
5 talk to and I established that the site was available or
6 continued to be available.

7 JUDGE CHACHKIN: But you didn't negotiation any
8 lease did you for the use of the site?

9 MR. GARDNER: No, sir.

10 JUDGE CHACHKIN: You didn't discuss negotiating a
11 lease for the use of the site did you?

12 MR. GARDNER: I didn't discuss negotiating a lease
13 for the site, no.

14 JUDGE CHACHKIN: But it does say here that it, it
15 has entered into lease negotiations. So, in fact you hadn't
16 entered into any negotiations over the lease had you?

17 MR. GARDNER: I felt that I had established that the
18 sites were available.

19 JUDGE CHACHKIN: But you hadn't entered into any
20 negotiations over the terms of the lease had you for the use
21 of these sites?

22 MR. GARDNER: Other than their availability, no,
23 sir.

24 JUDGE CHACHKIN: Well, so in fact you hadn't entered
25 into lease negotiations.

1 MR. GARDNER: Well, I respectfully disagree with
2 that statement.

3 JUDGE CHACHKIN: In your judgment the determining
4 the availability of a site constitutes lease negotiations?

5 MR. GARDNER: Yes, sir, it does.

6 JUDGE CHACHKIN: Is there some reason why you didn't
7 state in the exhibit the fact that all you had done was
8 discuss the availability of this site? Why did you say that
9 if that's all you had done?

10 MR. GARDNER: I told John Schauble what I had done,
11 I -- and John Schauble prepared this statement and his
12 statement looked accurate to me when I read it so I agreed
13 with him.

14 JUDGE CHACHKIN: So, your testimony is that what you
15 told John Schauble was that all you had done was discuss the
16 availability of the site? That's all you told him you had
17 done? You didn't say that you had gone into any lease
18 negotiations? These were John Schauble's words?

19 MR. GARDNER: Yes, sir.

20 JUDGE CHACHKIN: Go ahead.

21 BY MR. SCHONMAN:

22 Q Mr. Gardner, can you turn to -- back to the -- to
23 page 2 of this exhibit, the FCC form?

24 A 307 -- Form 307, yes.

25 Q Exactly. Do you see question number 6-C, "Estimated